

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DE VONNE C. HOUSTON,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C06-5283RJB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
December 22<sup>nd</sup>, 2006**

This 28 U.S.C. § 2254 petition has been assigned to the undersigned Magistrate Judge. Before the court is petitioner's motion to dismiss his unexhausted claims (Dkt. # 20). Petitioner wishes to proceed with the only exhausted claim (Dkt. # 20). Respondent has no objection to dismissal of unexhausted claims (Dkt. # 21).

DISCUSSION

The respondent in the action filed an answer showing that all but one claim in the petition are unexhausted. The remaining claim raises issues regarding the sufficiency of the evidence for constructive possession of a weapon. (Dkt. # 16). Petitioner's motion to dismiss his other claims and proceed with the exhausted claim was filed in response to the answer. The answer properly sets

1 forth petitioners' options (Dkt. # 16). Petitioner has elected to dismiss his unexhausted claims and  
2 proceed with the remaining claim. Accordingly, this court recommends all claims other than the  
3 sufficiency of the evidence claim be dismissed. A proposed order accompanies this report and  
4 recommendation.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,  
6 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
7 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
8 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time  
9 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **December**  
10 **22<sup>nd</sup>, 2006**, as noted in the caption.

11  
12 Dated this 30<sup>th</sup>, day of November, 2006.

13  
14 /s/ J. Kelley Arnold  
15 J. Kelley Arnold  
16 United States Magistrate Judge  
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